Virginia Department of Health Center for Quality Health Care Services and Consumer Protection

Regulation 101
Or
The Law, the Regulation and the License

- Law: a rule established by authority, society, or custom; the authority or control imposed by a system of rules.
 - Constitutional law
 - Common law
 - Statutory law: That body of law that derives from legislative enactment; it is written.

- Regulation: a principle or rule designed for controlling or governing behavior; a governmental order with the force of law.
 - Government authority of that private
 enterprise that involves a public interest
 - AKA rules, standards, or requirement

- Private enterprise
 - Home care
 - Hospice

- Public interest
 - Safeguarding those adults who, by virtue of age, disability or circumstances, are in need of supplemental or substitute care.

- Legacy of the Populist Movement of the 1870s and the enactment of 'Granger laws'
 - Effort to restore equal opportunity through government regulation of major industrial institutions such as railroads, insurance, banking and granaries.
 - Established regulatory administration

- Congress established the first regulatory agency in 1887
- Pennsylvania was the first to enact adult services protections in 1883.
- However, there was no national trend in adult protections until the last half of the 20th century.

- The 1970's saw a policy shift regarding "dependent" adults.
 - Historically, adults with physical, emotional or developmental disabilities received care in large facilities, usually remote from the community or family.
 - Congressional action and a Supreme Court decision turned the focus to "least restrictive environments"

- Regulatory administration
 - Licensing characterized by
 - Granting positive sanctions (the license)
 or
 - Enforcing negative sanctions (deficiencies, monetary sanctions)
 - Other forms are inspection, contracts, certification and registration

- Regulations are the essential building blocks for licensing
 - Three types
 - Substantive
 - Equivalent of a law
 - Compels compliance
 - Direct operation/behaviors
 - Carry positive/negative sanctions
 - Procedural
 - Directs the activities of the applicant within the licensing process
 - Interpretive
 - Clarification or explanation of a substantive or procedural

- Licensing: "the administrative lifting of a legislative prohibition"
 - §32.1-162.9 home care

Carried out by the regulatory agency - VDH

- Licensing a form of quality control through risk reduction
 - Tool to determine the degree services or products conform to standards.
 - Protection by prevention
 - Is the environment injurious?
 - Enforce compliance to reduce risk and safeguard clients

• VDH derives its licensing and regulatory authority solely from statutory law

§ 32.1-162.9 - "No person shall establish or operate a home car organization without license issued pursuant to this article

• §32.1-162.12. Regulations. The Board shall prescribe such regulations governing the activities and services provided by home care organizations as may be necessary to protect the public health, safety and welfare.

- VDH vested with 3 responsibilities:
 - Rule making authority
 - Effect of law 12 VAC 5-381
 - Most significant function
 - Decision making authority
 - Quasi-judicial related to issuance, non-issuance or revocation of a license
 - Determines status and terms of a license
 - Enforcement authority
 - Investigate to ensure ongoing compliance
 - Prevent illegal operations, e.g. operating without a license

- Regulations are adopted using 2 directives
 - The Administrative Process Act (APA)
 - Virginia's licensing law
 - Governor's Executive Order
 - Specific directions to Executive Branch agencies